

Spanish Audit legislation: The leading role of the Penalties System for Auditor's Independence Infringements



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*“As we acquire knowledge, things do not become more
comprehensible, but more mysterious”*

Albert Schweitzer

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Abstract

Recent financial scandals have provoked the loss of confidence in the financial information, forcing changes in the audit legislation. In this sense, one of the most important aspects to improve the audit quality is the auditor's independence, a key point regarding the trust in the audited financial information. For this reason, it has been a very discussed and controversial issue; however, the alternative solution of establishing an effective system of sanctions for auditor's independence infringements has never been analysed. A proper regulation of influential features and an appropriate degree of control and disciplinary activity could control the auditor's independence and, in turn, it could increase the financial information credibility. The current law has improved those aspects, especially in the field of EIP, but, further studies are needed to clarify its effectiveness by monitoring all infringements and sanctions.

Keywords

Audit legislation, auditor's independence, audit quality, infringement, penalty

JEL Codes

M42-Auditing

G14 - Information and Market Efficiency; Event Studies

Abbreviations

- ICAC: Institute of Accounting and Audit of Accounts
- ROAC: Official Registry of Auditors of Accounts
- NTA: Technical Standard of Auditing
- EIP: Public Interest Entities
- BOE: State Official Bulletin
- CE: European Commission

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1. Introduction

In Spain, the audit is regulated since 1988 and that legislation has undergone several modifications and renovations during the years until the last audit law Act-22/2015 which entered into force a few days ago. This rule respond to the need to adapt the previous legislation to the new European regulations, motivated by several financial scandals that have occurred in recent times, in which auditors were accused to be responsible for not detecting fraud and it has discredited their work. The audit is considered as a public interest activity because the financial information published by audited companies is necessary for the proper functioning of the market. To make this possible, it is necessary that third parties trust in the quality of disclosed information is there where the auditor plays an indispensable role by verifying the financial information provided, enhancing its reliability and quality. To meet these goals, auditor independence is one of the main values to be preserved, so different safeguards are needed.

Rivers of ink has been written about auditor's independence and variations on the theme, but there is no consensus on how to avoid the lack of independence and how to implement its effective control (Herrera, 2016). However, the crucial role of auditor's independence in the improvement of the audit quality has been demonstrated, along with improving confidence in financial reporting (Gómez, 2003). The problem is originated by the difficulty of proving the auditor's independence when suspicious arises in the market on the quality of service.

Despite the great deal of effort devoted to study auditor's independence, there are few studies that focus on the system of sanctions for specific infringements against independence as a mean to enhance auditor's independence. For this reason, the purpose of this paper is to analyse the role of the infringements and sanctions system provided for the Audit Laws in enhancing audit independence.

Consequently, it is based on the Spanish rules (Audit Acts) and the body responsible for controlling (ICAC), and some authors affirm that the best way to control auditor's independence is through the regulation of several aspects such as: a) cases of incompatibilities, b) the mandatory rotation, c) the amounts of fees, as well as, d) the effective control which translates into rigorous implementation of the sanctions system. In this sense, the ICAC (as the body responsible for monitoring auditor's independence) plays a key role to ensure independence. A study should be produced to figure out whether to extend its control is an effective way or not. In other words, to

verify how infringements and sanctions of the current legislation are, whether they are strongly or calmly enforced to improve auditor's independence.

This work contributes to the auditor's independence literature with the provision of a different view about independence through the introduction of the infringements and penalties system. This is an innovative perspective on audit because offenses and sanctions system is not yet considered as interesting enough in enhancing the auditor's independence.

In order to achieve the mentioned targets, the analysis is divided into two blocks: first of all, the theoretical framework is presented and both the legislative history and the situation of the audit sector in Spain are analysed; and secondly, an analysis of the infringements and penalties system until today, pointing out the current situation of the sector and the infringements and penalties system, with the goal of discerning whether the legislative change will improve the status of audit quality and confidence in financial information in Spain or not.

Regarding the legislative framework, a summary of legislative development has been devised in Spain, paying particular attention to the independence of the auditor and the system of infringements and sanctions as a key tool to control, as well as the analysis of the current sector situation as one of the reasons for changes in audit legislation. Comparing the new law with the previous, it can be seen that the new legislation guarantees the independence better than earlier for including new incompatibilities, increasing network auditor and incorporating a specific and restricted regulation for EIP in mandatory rotation and limit of fees.

As for the review of the infringement and penalties system, this report has analysed several years (1992 until 2014) based on a literature review of some empirical works with the purpose of analysing whether the ICAC exercises an effective disciplinary and control activity, especially regarding independence, or whether the control is quite relaxed (which would jeopardize auditor's independence). Different periods are analysed as the period before the legislative change, but it has depended on the legislation and the situation. This analysis has proved that violations related to the lack of independence are a matter of fundamental importance, as well as the effectiveness of the work of the ICAC in this field. However, it should be kept in mind that this research only examines and considers a few works of the sector; as a consequence, it has an insignificant volume.

Finally, the conclusions highlight once again the importance of the auditor's independence in order to ensure audit quality, reliability and confidence of users on financial information. Even before the legislative change occurred, the ICAC monitored the lack of independence due to its importance in the markets; however, it is very difficult to prove the lack of independence, so the new legislation will provide new effective tools for fencing auditor independence. The question now is if this legislative change will be sufficient to ensure auditor independence, avoiding new financial scandals and, therefore, increasing discredit of auditors. Nevertheless, it is true that further studies are needed to clarify these points.

2. Theoretical framework

The audit of accounts is an activity carried out by ***independent professionals*** which guarantees to a certain company that its annual accounts will reflect a true and fair view of the equity, as well as its financial position and the income of the firm. In order to attribute credibility to the accounting information and encourage its use in decision-making, the rules require that an independent expert has to prepare periodically an audit of the financial statements of the company. The external auditor is the responsible of reviewing and checking the annual accounts in order to render an opinion whether the financial statements of a company are presented fairly, in accordance with the financial reporting framework. The auditor's report must be incorporated compulsorily the annual accounts and it is a useful tool for stakeholders who need a reliable and fair view of the firm's financial information, especially for investors that should have an authoritative assessment about the level of implementation of the accounting principles, emphasizing the importance of trust among economic agents for reducing certain costs, and therefore for generating value (Gill de Albornoz & Illueca, 2006). If there is no trust between the parties involved in the financial transactions, it will be necessary to have credible sources of verification to ensure these transactions and then to reducing their costs, therefore, the credibility and objectivity of the auditors are essential for the well-functioning of the market.



Nowadays, the users of financial information need to recover the confidence that has been called into question after the last scandals, especially from Enron Case. The confidence in audit guarantees trustworthy financial information that facilitates the proper operation of the market. The only way to obtain the confidence is by doing quality audit works. In order to achieve this, it is necessary that auditors have a high

level of professional competence and in turn, they should operate in an independent way. If auditors have an independent attitude, they will be able to report the detected mistakes. To sum up, independence increases the audit quality and the confidence in the financial information of companies (García & Jaramillo, 2014). In addition, the



market efficiency depends on the trust that investors place in the system, closely related to the relevant, complete and accurate information that they can provide but, ultimately, all will depend on the existing degree of transparency. On the other hand, perhaps this role of "guarantor of reliability", the figure of the auditor, despite being a link in within the chain of information that integrates the financial system, it has acquired an active attitude towards the common goal of regaining lost confidence. The auditor is one of the most important components in the chain of financial information system; likewise, he has acquired an important role in regaining confidence for his figure such as "guarantor of reliability" (Gómez, 2003).

It follows from the above that the opinion of the auditor must be objective and reliable because it would be a senseless to trust with an audit report which is not entirely stable. But, is it possible to guarantee the auditor's objectivity? The only way to not call into question the opinion of the auditor is by guaranteeing his independence. That is established in the European Commission Recommendation which says *"the independence of auditors is essential for public confidence in the reliability of the reports they issue. It adds credibility to published financial information and value to investors, creditors, employees and other stakeholders of the EU companies, particularly in the case of public interest entities"* (Comisión Europea, 2002). It is also common sense that the current legislation reflects this obvious fact, it ensures its enforcement and it controls and includes penalties for noncompliance.

According to the Technical Standards Auditing (NTA), *"the accounts auditor will support a position of absolute **independence, integrity and objectivity** during his professional action. The independence supposes a mental attitude that allows to the auditor to act with freedom with regard to his professional judgement, for which must be free of any predisposition that limits his impartiality in the objective consideration of the facts, as well as in the formulation of his conclusions. [...] each and every of the functions that he has to realize have to*



be presided by a professional irreproachable honesty (integrity) [...] he will have to enjoy a total independence in his relations with the audited entity [...] and the freedom of expressing his professional opinion” (Instituto de Contabilidad y Auditoría de Cuentas, 1991).

Once it has been checked the importance of trusting with accounting information of economic agents and the direct relationship between reliable information and auditor’s independence, it should be noted that if an appropriated control of independence through the system of infringements and penalties is applied, the independence of the auditor will be demonstrated and, in turn, the credibility and reliability of accounting information verified by the auditor will be guaranteed. It is important to remark that infringements and penalties system was included in the



legislation since the first audit of accounts law was created in 1988 and it has been improved every act until the current law.

This concept and its regulation have been developing over years until the current new Audit Law 22/2015 (Boletín Oficial del Estado, 2015) was issued. This law is applied since 17th June 2016, but consequently, the new infringements and sanction system have not been enforced yet. The paragraphs bellow try to describe the current situation of the audit sector, as well as the evolution of the audit legislation which is focused on the system of infractions and sanctions related to independence. The purpose is twofold: to analyse briefly the audit situation in Spain and to offer a critical view of the control and the degree of auditor’s compliance with the independence requirements in order to guarantee the confidence in financial information.

a. Audit Legal Framework in Spain until 2015

According to the preamble of the new Spanish Financial Auditing Act-Law 22/2015 of 20th July (Boletín Oficial del Estado, 2015) (Boletín Oficial del Estado, 2015), the activity of account auditing was regulated for the first time by Act-Law



19/1988, of 12th July (Boletín Oficial del Estado, 1988), transposing the Eighth Directive 84/253/CEE now repealed. The law defines some key questions about financial audit such as auditor’s responsibilities and incompatibilities, the system of penalties and the controlling role on the part of the Institute of Accounting and Audit of Accounts (ICAC).

Since then, several norms have been developed one after the other until completing the penalty system over time as: Act 4/1990, of 29th June, on General Budgets of the State for 1990, Act 31/1991, of 30th December, on General Budgets of the State for 1992, Act 13/1992 (Boletín Oficial del Estado, 1992), of 1st June, on Own Resources and supervision in consolidated base of Financial Organizations, Act 3/1994, of 14th April, Act 2/1995, of 23th March, on limited liability companies, Act 37/1998, of 16th November, on the reform of Law 24/1988, 28th July, on the Stock market, Act 41/1999, of 12th November, on Systems of Payments and Liquidation of Values, and so on.

It is important to remark two key reforms in audit legislation:

1. The reform introduced by Act 44/2002, of 22th November, of Measures of Financial System Reform (Boletín Oficial del Estado, 2002) and Law 62/2003, of 30th December, upon which substantial amendments were introduced such as the **requirement of independence** for auditors, the **causes of incompatibilities**, the **auditor rotation** in relation to certain audited organizations, the **system of penalties** or the skills of the ICAC in regard to the control of the audit activity, among other questions. Concerning to the auditor rotation, this point has led to a great deal of controversy due to the lack of consensus about the optimal rotation. Subsequently, there were several amendments regarding the audit contract and rotation such as Act 16/2007, of 4th July, modified by Law 34/2007, of 15th November which allowed the renewal of the auditor's contract for successive periods of up to three years once the initial contract had finished (4th final disposition Law 34/2007).
2. The substantial reforms introduced by Audit Act-Law 12/2010 of 30th June that modified Act 19/1988, among others, to transpose the Directive 2006/43/CE (Boletín Oficial del Estado, 2010). This new standard entailed a turning point for the audit activity regulation, which would be now understood as an **activity of “public interest”**, it exists a group of people and institutions who rely on the work performed by the auditor of accounts, who helps to the correct operation from the markets and increases the integrity and the effectiveness of the financial statements information (Herrera, 2016). This law amended several aspects of the existing legislation, including the norms of professional ethics, independence and





objectivity, the auditor responsibility, the quality control of auditors and the effective systems of investigation and specific sanction, among others. It is important to emphasize the modification about the duty of independence, including the network concept, the scope of subjective extensions to include certain relatives, the obligation to publish an annual report of transparency, the rotation of the signer of an audit report and so on.

A summary of the main Spanish laws and their amendments regarding audit activity is shown at Figure n.1.

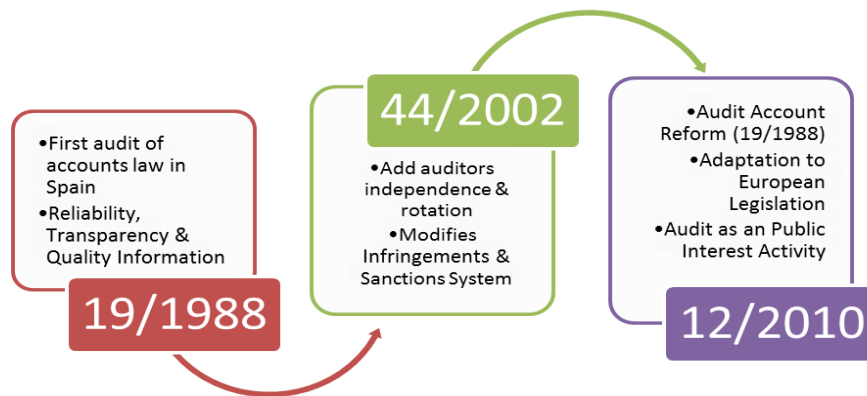


Figure 1: Main audit laws in Spain before Act 22/2015

Source: Own Elaboration

In relation to the Royal Legislative Decree 1/2011, of 1st July (Boletín Oficial del Estado, 2011), it was approved the Consolidated Text of the Law of Audit of Accounts, a comprehensive text of the norm that is applicable to the activity of audit of accounts; it is systematic, harmonized and unified until the entry into force of the new law.

b. New Challenges in the Audit profession, New Regulatory Changes. The new Financial Auditing Act-Law 22/2015

According to the Act-Law 22/2015 Preamble, the financial crisis caused an issue on the European legal framework which was questioned and this fact drove some changes in the normative. As the main objective, the audit activity would have to contribute to the financial stability, in this way, the confidence of economic and financial



information would be reinforced and it would improve audit quality. As a result, the directive 2014/56/UE and Regulation (the EU) 537/2014 were issued. These European norms also try to increase the **transparency**, to strengthen the **independence** and **objectivity** of auditors and to invigorate and open the audit market, among other questions. As described previously, the objective of this legislation is twofold: firstly to recover the confidence of users in the economic and financial information that is audited, and secondly to reinforce the quality of audits by improving auditor's independence. For this reason, the Act 22/2015 was issued to adapt the Spanish audit law to that European legislation with the possibility of including additional requirements through the technical audit regulations.

The new Spanish law is structured in a Preliminary title and five titles; however, the present work focuses on the study of regulatory aspects related to auditor independence (Title I, Chapter II, 2nd Section) and those are related to the system of infringements and penalties (Title III). By comparing the previous laws and the current one this final project aims firstly to analyse if the new law of audit enhances the guarantees for auditor independence. The second objective is to evidence whether a control of the duty of keep independence was exercise or not through the empirical study of the infringements and penalties system. Finally, the third objective is to analyse the repercussion of the new law in the sanctions for lack of independence, and if the above mentioned law will be able to avoid more financial scandals related to the audit.



The current vice-president in functions Soraya Sáez de Santa Maria ensured that the aim of the new audit law is *"to reinforce the services of audit, to increase the quality and to strengthen the auditors' independence"* (Expansión.com, 2015).



Furthermore, Luis de Guindos, Minister of Economy and Competitiveness, has also emphasised that the norm promotes the independence of the auditor. For this reason, there are included up to eleven incompatible services that auditors cannot carry out: e.g. accounting services, internal audit services, design of procedures for internal control or management of risks related to financial information, fiscal

services and valuation, among others. In addition, some relatives of the auditor also cannot supply the above-mentioned incompatible services. The following picture (Figure n.2) shows the significant differences between the new audit law and the previous one, according to expansion.com (2015):

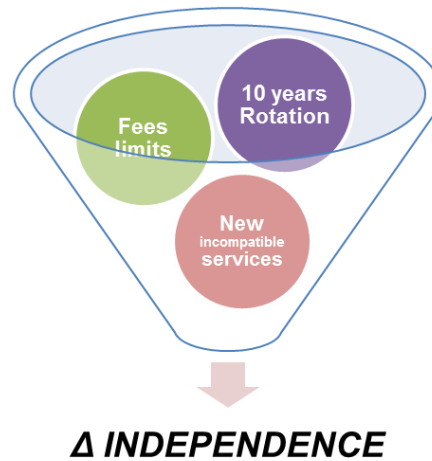


Figure 2: Legal developments Act 22/2015

Source: Own Elaboration

In keeping with the picture above, auditor's independences could be enclosed by three dimensions: the proper regulation of the incompatibilities that includes non-audit services, the auditor's rotation regulation and an appropriate limit of fees. In support of this claim, the European Commission would like to reinforce the independence of auditors and avoid low levels of audit firm rotation or the provision of non-audit services by audit firms (European Commission, 2010). It is important to highlight that the new audit law includes some of these aspects but it is necessary to analyse if the changes would be on the right track. Along the same lines, Zubiaurre (2012) points out that it is considered the limit of fees, the non-audit services limitations and the obligatory rotations are measures which could be taken to protect the auditor's independence even though the present controversy and the different points of view from the doctrine.

i. Changes related to Auditor's Independence

Due to the financial crisis, the recent financial reporting and the auditing scandals such as Enron Case in 2002 and its "**creative accounting**" (Moreno, 2010), Gowex and its "**black Tuesday**" in 2014 (Martínez, 2014), the bankruptcy of Bankia (Navarro, 2016) or the "*problems with the debt*" of Abengoa, among others (Navarro, 2014), the user's confidence in audit reports and financial statements is at risk, for this

reason, the audit activity must guarantee that this information is reliable and accurate. Auditor independence ensures confidence in the audit service and, therefore, it also ensures the confidence in financial reporting, being the audit profession a service of public interest. Consequently, to jeopardize auditor's independence could also undermine user's confidence in financial reports as ICAC points out (Fernández, et al., 2013).

Hereafter, it is explained the modifications in the new Act 22/2015 (Boletín Oficial del Estado, 2015) which seeks to guarantee the auditor's independence, according to the aspects named above, comparing with the previous consolidated text of the Audit of Accounts Law (Boletín Oficial del Estado, 2011)

It is important to mention that auditor's independence is a key requirement directly related with audit quality, or put in another way, *"the independence of auditors should thus be the bedrock of the audit environment"* (European Commission, 2010). Thus, the new law tries to improve the audit activity across the regime of independence to which all auditors are subject. It is remained the standard content 12/2010 (Boletín Oficial del Estado, 2010) based on:

- The general principle of independence, which requires an auditor to refrain from acting when his objectivity could be compromised in relation to the economic and financial information that has to be audited.

- Incompatibilities, set of circumstances, situations or specific relationships in which it is considered that auditors are not independent and they should refrain from conducting the audit.

The European regulation also establishes the general principle of being independent, having to the auditors refrained when there are financial, commercial, labour or others relationships, considering their network environment and more stringent requirements such as a person who could influence the outcome of the audit's refrain from participating in the decision-making process, taking measures to avoid conflicts of interest or business relationship or otherwise, direct or indirect, actual or potential, that could compromise independence, among others.



On the basis of this Directive, it has been incorporated the new requirements in order to strengthen the incompatibilities system. This does not mean that the auditor's independence cannot be compromised by previous threats from interests or business

relationships, work, family or others, existing prior to the period of calculation established. Thus, it incorporated legally the obligation to establish systems to safeguard against threats that may arise from conflicts of interest or any commercial, labour, family or other relationship. Therefore, ***auditors should be and appear to be independent.***

It is important to remark that the new law establishes that the duty of independence could be affected by the existence of relationships, situations or services, not only between the auditee and the auditor, but also ***between it and the auditor's network***. In extension rules, it is collected that if people or entities included in this area incurred in any of the cases of incompatibility referred to in this Act and other laws, it also makes incompatible the auditor in relation to the respective entity.

Specifically, in 2015 Act, it is defined the ***General Principle of independence***, adding the fact that every person in conditions to influence directly or indirectly in the result of the audit they will have to abstain. The new law also remarks the prohibition of incur in certain incompatibilities, it maintains that the Institute of Accounting and Auditing is *"the agency responsible for ensuring proper compliance with the duty of independence and to assess in each particular job possible lack of independence of an auditor or audit firm"*.

With respect to the ***identification of threats and safeguard measures***, the new text includes some new threats factors such as those resulted from the existence of conflicts of interest or any commercial, financial, labour, family or other relationship, direct or indirect, actual or potential. It also remarks the new incompatibilities derived from situations that compete in relatives of the auditors, people or entities related to the auditor or audit firm and, finally, those who compete in people or entities belonging to the audit network or audited company.

Regarding to ***incompatibility causes***, the new audit network concept has been incorporated with more incompatibilities about some circumstances derived from personal situations and from given services. To mention some examples: the significant direct interest derived from a contract, the implementation of operations by financial instruments, the request or acceptance of gifts or favours except in the case of being a gift which has an insignificant value or being included in the services of accounting, the design of procedures



related to the financial information, among others, pointing the incompatibilities spread to the companies linked of the audited company.

The auditor network is an important change in the new incompatibilities regime with several articles related. In general terms, it includes ***the incompatibilities derived from situations which contribute to relatives of the principal auditors responsible***, including the provision of services and not only to links of consanguinity or affinity up to the first degree, or the second degree if it is a collateral consanguinity such as previous law said. According to the ***incompatibilities derived from situations that concur in people or entities directly related to the auditor or audit firm***, it is included all the people which form part of the engagement team, employees, provide services or people directly involved in the audit activities and not only members of the audit firm or any person who participates or has the ability to influence the outcome of the audit. Finally, the ***incompatibilities derived from situations which contribute to other individuals or entities belonging to the network of the auditor or audit firm***, it is added the single network of the main auditors responsible and not only the signatory auditor. Additionally, it has been specified as persons of the auditor or firm network those that have the condition of partner, administrator and the organ of administration or general representative in any firm belonging to the network.



Hereafter it is explained the change of several interesting points that could influence in the guarantee of the auditor's independence. In respect of ***the regime of contract***, obligatory rotation is not established except for entities of public interest which have their own regime in the Title I, Chapter IV, including the independence regulation (3rd section), that it will be briefly explained below. About the ***prohibitions later the conclusion of the work***, it is included auditors who form a part of the audit order team. Special is the case of ***fees and transparency*** which incorporates the definition of contingency fees and the ***reasons of abstention for perceived fees*** when auditors or their networks obtain fees derived from non-audit services which represent more than 30 percent of their total annual income.



As discussed earlier in this report, ***Public Interest Companies*** (EIP) have their own regime in the new act 22/2015 that includes some additional restrictions. It is necessary to emphasize that

expansion companies with values admitted to negotiation in the alternative investment market (MAB) has been included in the EIP group in order to avoid news scandals such as Gowex fraud (Veloso, 2015). The new law restricts some questions about the auditor's independence of EIP in accordance with the regulation (EU) n ° 537/2014 (European Parliament, 2014). From the analysis of both laws it can point out several aspects such as: the adding of **incompatibilities and prohibition of the provision of some non-audit services** (some tax services, payroll services; some legal services, among others); the **duty of rotation**, being the initial engagement for at least three year and the maximum duration 10 years, including renovations and the **obligatory rotation of the principal auditors responsible** for the work of audit (mandatory rotation); the **appointment of auditors** with free selection procedure and the justified recommendation of the audit committee; and **fees** shall not be contingent fees (calculated according to the outcome or the result of the work) and non-audit services shall be limited to no more than 70% of the average of paid fees, not being the fees received more than 15% and not being more than 15% of the total annual revenues from non-audit services. The picture below (Figure n.3) shows the most important changes in auditor's independence, differentiating between EIP and the rest of companies. Logically, EIP have a more restricted regime as far as the auditor's independence with details as the mandatory rotation.

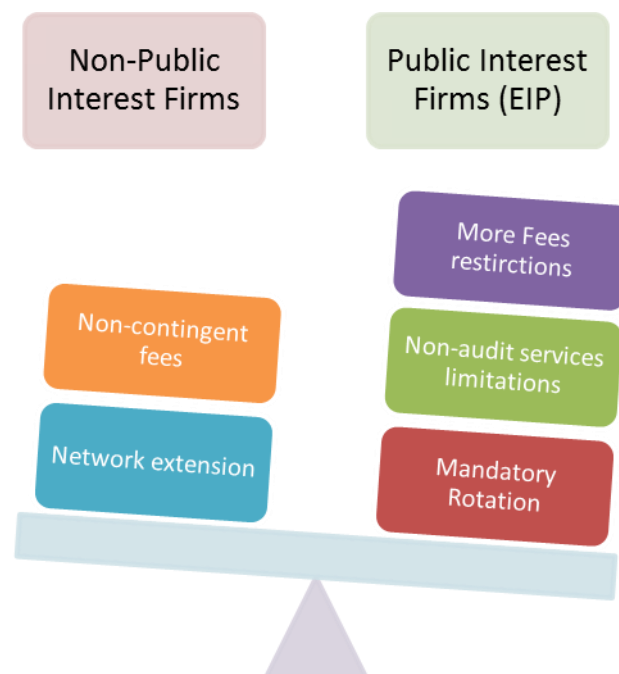


Figure 3: Interest changes related to the Auditor Independence

Source: Own elaboration

ii. Changes in Infringements and Penalties System

With regard to the infringements and penalties system, it should be noted that the previous laws introduced the major changes and the current law has only included some small amendments (See tables in annex). Already in 1988, the duty of auditor's independence was introduced and its breach was considered as a serious infraction (Boletín Oficial del Estado, 1988). Nevertheless, they were considered as minor and the sanctions were not sufficient because very serious infractions did not exist yet. Gross negligence or wilful misconduct in the breach of independence did not become a very serious infraction up to the law 44/2002 when this new type of infractions was introduced (Boletín Oficial del Estado, 2002). With the law 22/2015 (Boletín Oficial del Estado, 2015) new changes have been added in order to strengthen the auditors' independence such as the failure of the maximum duration of the contract or the limitation of fees, concepts narrowly related to the audit independence because it reduces the negative effects that the loss of clients can have and it avoids the excessive familiarity between auditor and client, increasing the independence (Herrera, 2016).

Nonetheless, the sanctions associated with these infractions have developed in different senses from 1988. It should be stressed that the sanctions depend on the type of committed infraction and, therefore, the lack of independence will be a very serious infraction, depending on if there was gross negligence or wilful misconduct in the event. From the law 13/1992 (Boletín Oficial del Estado, 1992), sanctions are not only for the auditor, it is applied both to the auditor and to audit firm by the same infraction. Whereas, the new law prescribes practically the same amounts, limits in the sanctions and years of suspension in the ROAC than the previous law. There was a significant change between the 2010 law and the previous one (law of 2002) regarding sanctions. In all the cases, the law of 2002 increases so much the quantity of sanction and the minimal and maximum limits of fines with regard to previous law of 1992. Later, this increase in the amount of the sanctions and limits was reduced in 2010 and it remains the trending with the new law (Boletín Oficial del Estado, 2010).

If the maximum fines for audit firms are analysed graphically, it can be noted that penalties regulation have been changing during the different laws, increasing until 2002 and decreasing until the current law (Figure n. 4). Data are calculated with the amount of penalties that laws fix for serious and very serious infringements.

The fine related to the auditor is not included because this fine is independent of the audit firm penalty, but the same study is possible with the auditor fines data. It was

observed a growing trend in 1992 and 2002 acts, but this percentage decreased in 2010 and it remains in force with the present law.

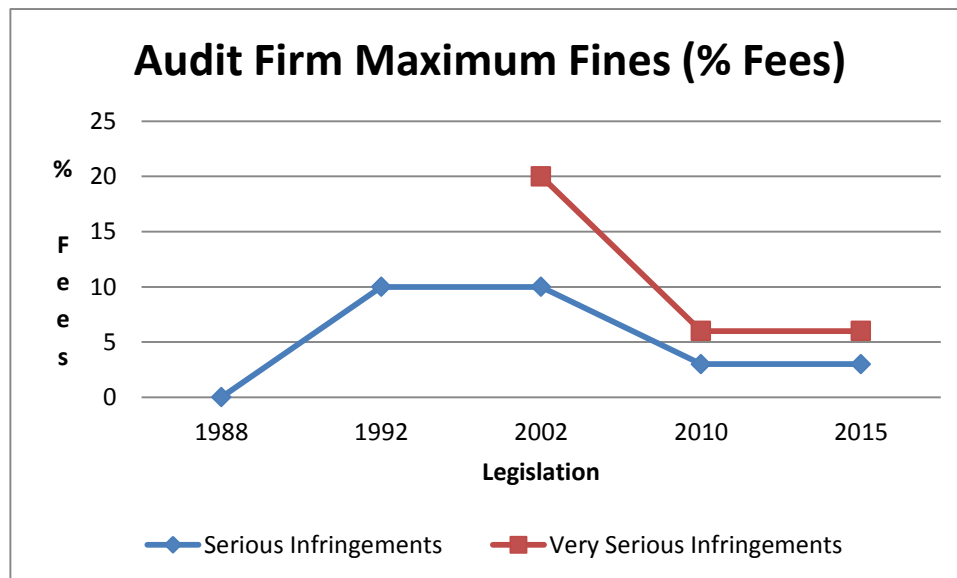


Figure 4: Maximum Fines to audit firms according to the Fees

Source: Own elaboration

Another example is the graphic above (Figure n.5, own elaboration with the information obtained from the legislation) that shows the minimum fines of serious and very serious infringements for the audit firms in different laws. In this graphic, it can be seen the hardness of the legislation in 2002 and the reduction of the penalties once again.

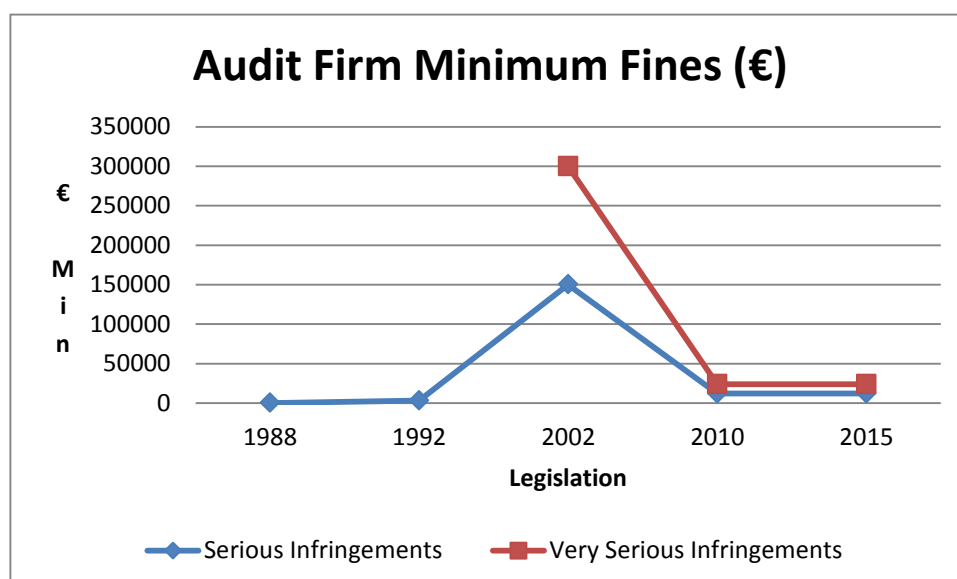


Figure 5: Minimum fines for audit firms

Source: Own elaboration

In general, sanctions try to dissuade people of committing infractions in any area, and this also happens with the sanctioning regime in the financial audit. The objective of the sanctions system is not the collection of fines, but avoiding infringements. For this reason, sanctions have reduced since law 44/2002 in audit legislation by the criticism from the audit sector, causing doubts in this respect. According to Gonzalo and Castellanos (2010), the act 2010 has extended the types of infraction but it has reduced the amount of the sanctions and, as a consequence, this new system has not a deterrent effect. In addition, the infractions related to the independence have to include wilful intent or gross negligence on the part of the auditor to be qualified and sanctioned like very serious.



In view of the previously mentioned, on the one hand, it can be noted that control of infringements could be effective but as penalties system has been relaxed, this control could be useless because it does not achieve its target of avoiding infringements and that fact is just what this report pretends to demonstrate in the case of Spain. On the other hand, criticism about the collection of fines as penalty system objective forces the decrease of the amount of penalties, searching a balance between the audit sector opinion and the effective legislation.

c. Audit Market in Spain

It is well known that the situation of the audit sector causes a great international interest both at national and at global level, so there are many studies in the matter. The present report is focused on the national area, that is to say, it analyses the evolution of the sector of audit in Spain. This is necessary in order to understand if the current legal framework is adapted to the real-life conditions.

In accordance with Toscano, et al. (2014), at present the named **“Big Four”**



(Deloitte, EY, KPMG and PwC) controls the audit services market worldwide, operating in more than 150 countries, including Spain, and auditing more than 90 percent of the biggest companies. Through a process of mergers with another audit firms, the big audit firms reduce

the number of competitors because of the existence of an oligopoly situation in the audit market. Consequently, a small number of audit firms control a high percentage of the activity both at the world and at the Spain market. In the specific case of Spain, there is a tendency to trust in the big international audit firms by Spanish companies.

The Journal *Expansión* publishes every year its annual Audit Ranking where shows the audit firms that have a revenue over a million Euros (Expansión.com, 2010; 2011; 2012; 2013; 2014; 2015; 2016). Analysing this information from 2009 until 2015, it is possible to observe (Figure n.6) that the **“Big Four”** firms have not moved of their respective positions, even it is possible to realize this extension to the **“Big Six”** audit firms which operate in Spain. There are only some changes that can be observed in the first ten places. One of them is the disappearance of *Confeauditores* and *Gassó RSM*, giving way to *Adade* and *Crowe Horwath*. *Gassó RSM* returns to its position in the ranking in 2013 and it kept in the eighth place since then, displacing to *Crowe Horwath* to the eleventh position. In 2015, the surprise was that the *PKF Attest* jumped and now it appears in the **“Top Ten”**, thanks to a progressive increase of its revenues in the last years.

	2009	2010	2011	2012	2013	2014	2015
1st	Deloitte	Deloitte	Deloitte	Deloitte	Deloitte	Deloitte	Deloitte
2nd	PwC	PwC	PwC	PwC	PwC	PwC	PwC
3rd	KPMG	KPMG	KPMG	KPMG	KPMG	KPMG	KPMG
4th	Ernest&Young	Ernest&Young	Ernest&Young	Ernest&Young	Ernest&Young	Ernest&Young	Ernest&Young
5th	BDO	BDO	BDO	BDO	BDO	BDO	BDO
6th	Grant Thornton	Grant Thornton	Grant Thornton	Grant Thornton	Grant Thornton	Grant Thornton	Grant Thornton
7th	Confeauditores	Confeauditores	Confeauditores	Auren	Auren	Auren	Auren
8th	Auren	Auren	Auren	Mazars	Gassó RSM	Gassó RSM	Gassó RSM
9th	Gassó RSM	Gassó RSM	Gassó RSM	Adade	Mazars	Mazars	Mazars
10th	Mazars	Mazars	Mazars	Crowe Horwath	Adade	Adade	Mazars

Figure 6: Top Ten Audit Firms Evolution

Source: Own elaboration

The next image shows the top ten audit firms and their revenues in 2015, it can be seen graphically that the concentration of the market is only in four audit firms (Figure n.7, own elaboration with *Expansión Journal* Audit Ranking information). In this year, the sector has billed 2,414 million euros but, 1,845.5 million euros belong to the “Big Four”, which supposes 76.45% of the market revenues. Regarding to the “Top Ten”, these first 10 audit firms have obtained the 88.75% of the market share with 2,142.50 million euros of turnover.

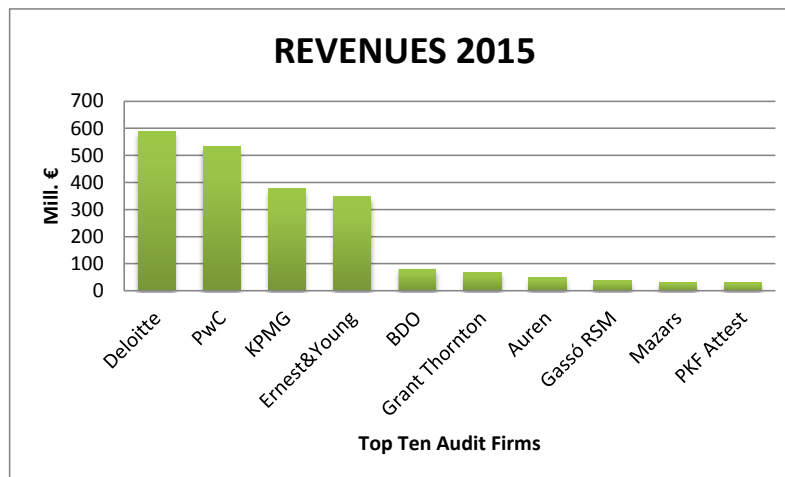


Figure 7: Revenues (Mill. €) of the First 10 Audit Firms in 2015

Source: Own elaboration

3. Infringements and Penalties System: Data Review

a. Methodology

Once theoretical framework has been explained, it is important to analyse some aspects about infringements and penalties system in order to distinguish the evolution of infringements and penalties according to the legislation until now and the future evolution of them with the new legislation. It is important to remark that the study is based on the theory explained above which says that auditor's independence is essential to improve the audit quality and the only way forward is across the ICAC control of infringements and the application of appropriate sanction. In this case study there are several limitations due to the access of the information. For this reason, it is analysed the information in several periods according to the pooled data obtained in different ICAC Activity Reports (Instituto de Contabilidad y Auditoría de Cuentas, 2010; 2011; 2012; 2013; 2014; 2015), several articles regarding infringements and penalties (Navarro & Bernad, 2004; de las Heras, et al., 2008) and other papers (Fau, 2014), taking into account that there are not data since 1988 until 1992. The main objective is the analysis of the auditor independence and showing if the new audit law improve it or not, bringing light the improvement points of the new law. The sanctions issued in the BOICAC are serious and very serious infringements. Therefore, the access to the sanctions corresponding to minor infringements is not possible, which it could generate a significant bias in the information analysed. However, the lack of independence of the auditor is considered a very serious or serious infringement, both on the current legislation and on previous. Consequently, all sanctions filed for this reason appear in BOICAC and it can ensure the integrity of the information used.

Firstly, it is show the trending of the sanctions since 1992 until 2014, valuing if the changes in audit legislation were significant. Secondly, it is analysed the cause of infringements and the type of infringers in the period since 1992 until 2002 pointing out the infringements related to independence. This period is important because it had not very serious infringements yet, only serious and minor infringements were included in the legislation until 2002. The same way is used to the period since 2002, when very serious infringements were introduced in the law, until 2014 in order to compare both situations. In this period, it can show the amount of penalties and its implications. Finally, it is described the time-series analysis about 2013 and 2014 according to the activity reports of the ICAC (Instituto de Contabilidad y Auditoría de Cuentas, 2014; 2015) with the objective of showing the previous situation of the auditors' independence before the legislation changed. This period can confirm the reasons of the law changes in the subject of independence.



b. Results

In order to show the trending of the ICAC sanctions since 1992, it has been grouped together some data from several articles and studies cited above (Figure n.8). The ICAC activity was insignificant in the early years, peaking in 2001 until this moment, previously the reform of several aspects in the audit law in 2002. After that, return to decrease until 2004. From that moment, the trending is unstable but it has an important rise of the ICAC sanctioning activity. In 2007, when the financial crisis starts, the number of the sanctions was 59, the second year with more sanctions in the history of the ICAC. In 2010, when the second Spanish audit law was approved, the number of sanctions was at its lowest level since 2000. The maximum number of sanctions arises in 2013 with 60. The increase of the number of sanctions could be because two reasons: by an increase of the control or by an increase of the infringements. In this case, it has not data to analyse this point but, in poppers sections it will go into this with



greater depth. It is curious how a decrease of the number of penalties exists in the same year or previously those reforms happen, nevertheless, data do not show a specific trending or a particular situation is related. It is point out the increase of sanction activity in the last few years, probably because of the increase of scandals in the financial market.

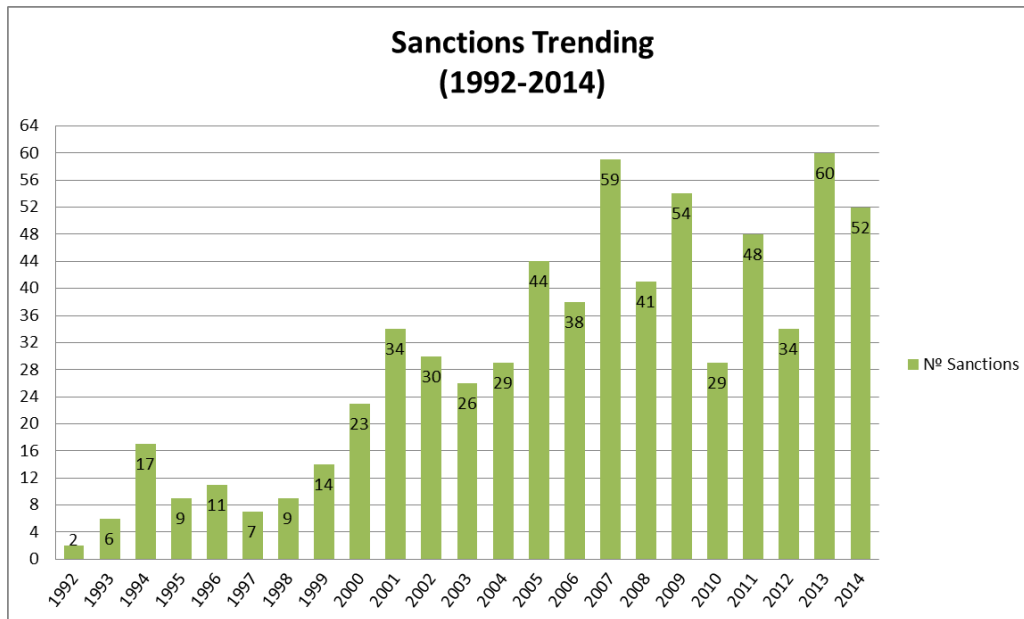


Figure 8: Sanctions trending since 1992 until 2014

Source: own elaboration

i. Infringements and Penalties Research of 1992-2002 Period

Hereafter, it is analysed the specific period since 1992 until 2002 which very serious infringements were not established in the current legislation yet. In this decade, the number of the sanctions was a total of 180, being in the majority of the cases for individual auditors (61.1%), as show Figure n.9). In this moment, audit legislation was very recent in Spain but not for the rest of Europe where big audit firms already operated, including in the Spanish market.

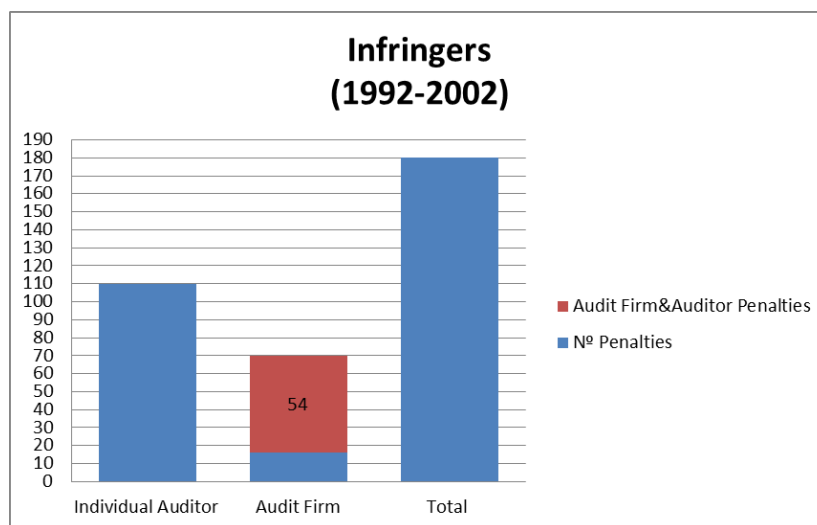


Figure 9: Number of sanctions classified by type of Infringers (1992-2002)

Source: own elaboration

Infringements caused by audit firms were a minority (70 penalties that supposes a 38.89%) but, it was sanctioned in a vast majority of the cases both audit firm and the main auditor (77.14%), being sanctioned only the audit firm in the 8.89% of the total infringements.

Apart from that, Figure n.10 shows the most important infringements commit in this period which the lack of auditor's independences is the second cause of sanction after breach of standards (19 infringements that supposes a 10.6%). That fact reveals the importance of the auditors' independence and its control from part of the ICAC, in spite of the difficulty that exists in its demonstration.

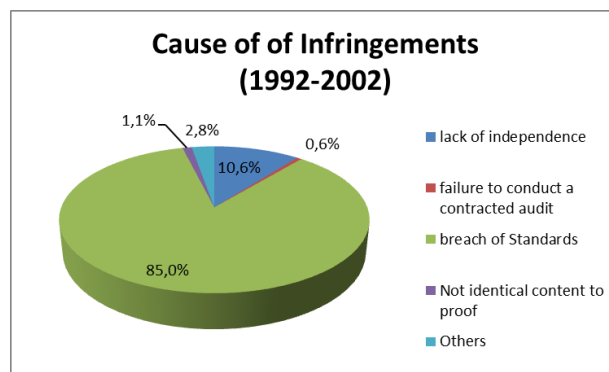


Figure 10: Causes of the infringements since 1992 until 2002

Source: own elaboration

Thus, the breach of standards was the 85% of the infringements because it is an easily detectable violation. It is important to remark that lack of independence could damage de quality of the audit report and, in addition, it could decrease the confidence of the users of financial information.

ii. Infringements and Penalties Research of 2003-2014 Period

Down below, it is study the infringements and penalties system situation since 2003 until 2014. In order to maintain the uniformity of the data, it is impossible to include 2015 because ICAC activity report has been not published yet. Remember that in 2002 reform it was stablished the difference between serious and very serious infringements. In the case of auditor's independence, the lack of independence could be considered as serious or very serious, depends if it is an infringements with gross negligence or wilful misconduct or not.

Hereafter, the Figure n.11 shows the penalties applied in the period under consideration, being 2.6 times more than the previous period, although there is only one additional year. It is an important data because demonstrate that the control and

disciplinary activity of the ICAC is increasing. Apart from that, this decade is very important for the scandals around audit sector since Enron in 2002. This fact could be another reason for that growth, concurring with the start of the financial crisis. With a total of 469 penalties, almost the 68% of the infringements were provoked by audit firms and their auditors (317), being only the 32.4% caused by individual auditors (152). If this situation is compared with the same analysis in the previous period, it is observed a change on its. While the most sanctioned infringers were the individual auditors in the past decade, in the current period are more penalised the audit firms, probably because of the concentration of the sector in the big audit firms. It is a question of statics that the more companies are audited by audit firms, the more probability of sanction these audit societies.

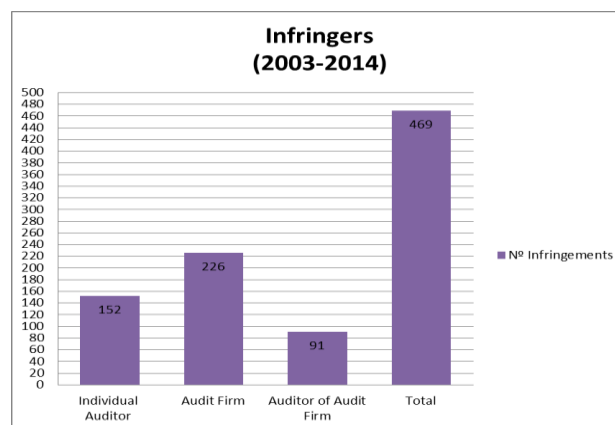


Figure 11: Number of sanctions by type of infringers since 2003 until 2014

Source: own elaboration

It is important to highlight that audit firm was penalised in solitaire around the 48% of the total penalties (a 71.29% of the audit firms sanctions) against of the 20% of sanctions imposed to the auditors (28.7% of the audit firms penalties) but, in this case, audit firm is also sanctioned because when ICAC penalise the main auditor pertaining to an audit firm, audit firm is automatically sanctioned too.

As well as the previous period, it is important to study how the important is the position of lack of independence infringements. As show Figure n.12, the lack of independence continuous the second cause of infringements in the analysed period (2003-2014). It is indicative than a worry from part of the ICAC for this kind of infringements, on top of the breach of standards the first position. That fact confirms the importance of the independence such as the preservation of the financial information confidence.

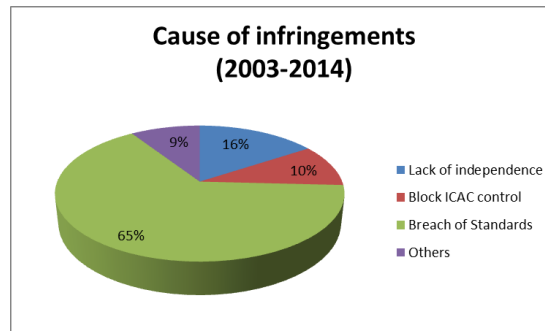


Figure 12: Main causes of infringements since 2003 until 2014

Source: own elaboration

Another kind of infringements are to block ICAC control and not providing the requested information (10.1%), to failure to conduct a contracted audit (2.37%), to work without ROAC registration (5.34%), among others.

According to Figure n.13, a vast majority of infringements collected in the BOICAC are serious infringements (93.4%), with only the 6.6% are considered very serious infringements with gross negligence or wilful misconduct.

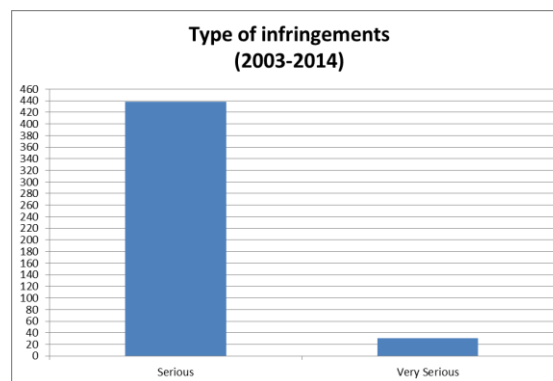


Figure 13: Type of infringements since 2003 until 2014

Source: own elaboration

That effect is just because the default has to be very important to be considered very serious. It is the proof of the ICAC control does not only search the collection of fines but to avoid the infringements. Furthermore, if the sanction has not the appropriate amount, it will be not sufficient to reduce the infringements in lack of independence. In Figure n.14 the majority of sanctions are between €6.000 up to €12.000. It is obvious that audit firms such as Deloitte that turned over \$34.000 million in 2014 do not have any kind of problem to pay fines in these ranges.

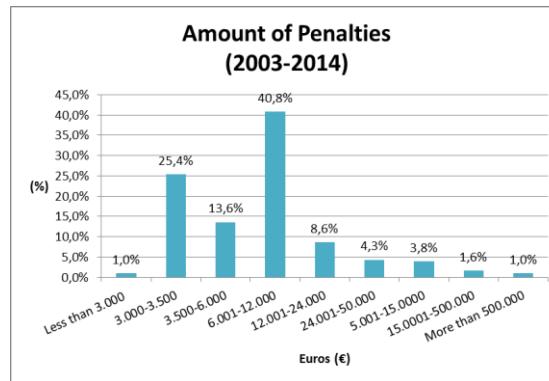


Figure 14: Amount of penalties since 2003 until 2014

Source: own elaboration

Only 6 exceeded half a million Euros in eleven years, so it seems the hardness of the 2002 reform has not influenced excessively in this regard and, in addition, this fact verify the previous theory that very serious infringements are minimum. The Figure n.15 shows graphically the impact of the amount of sanctions, being only the 3% of them more than €15.000, that it corroborates the lack of dissuasive power linked to the penalties.

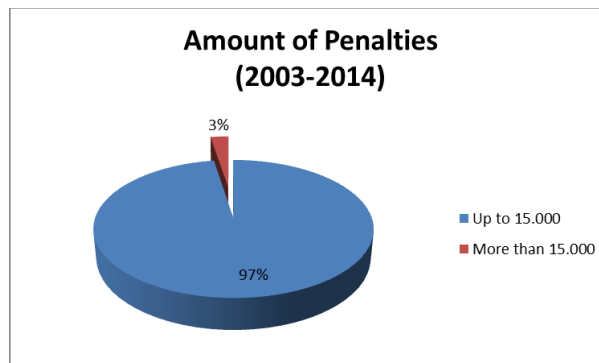


Figure 15: The portion of amounts of penalties since 2003 until 2014

Source: own elaboration from several articles cited above.

Comparing both periods, a change of the audit market can be observed in favour of the audit firms and the legislation should reflect that situation in order to avoid the lack of independence from part of the auditors who operate in a very concentrate market, putting their independence at risk and individual auditors in danger of disappearing. In addition, ICAC control has increased substantially a cause of the growth of audited companies, its disciplinary activity and the financial crisis which provoked a rise of falsehood in the financial statements of some companies in order to avoid the financial crisis impact and the auditors not being able to prevent this situation.

iii. Infringements and Penalties time-series analysis 2013-2014

It is important to analyse the previous situation before the change of the audit law in order to visualise the causes of the necessity of a new audit act. First of all, it can see the situation of the audit sector, having into account the sector is formed by individual auditors and audit firms. In the Figure n.16 it can distinguish that individual auditors are about the double than audit firms in 2013, but nearly 90% of audit revenues are invoiced by ten audit firms, fact that supposes that only the 10% of revenues are for 2700 individual auditors and the rest of audit firms (around 1390 approximately) as described above in the sector study.

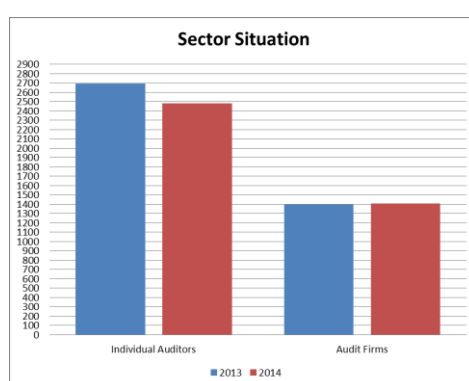


Figure 16: Sector situation in 2013 and 2014

Source: own elaboration from ICAC Activity Memories of 2013 and 2014.

These data confirm the high level of concentration of the audit market and the necessity of redistribute the audit contract in order to avoid the concentration of the field across the obligatory rotation of the auditor, especially in Public Interest Entities (EIP). Comparing both years, the trending is the decrease of individual auditors and the maintaining of the quantity of audit firms. A large number of individual auditors cannot survive in a market with a high level of competence and tend to disappear.

As far as the ICAC control in the studied years, the investigation and inspection or direct action has been increasing in 2014 but not as regard supervision or indirect action (Figure n.17). That supposed that ICAC activity is focused in direct actions, that is to say it is the proper ICAC activity in quality control, transparency, technical control and independence protection against the supervision of the inspections realized by the auditors' corporations, consequently the ICAC is more concerned by the exercise of its control and disciplinary activity than the corporation supervision. This fact is also a symptom of confidence in the auditors' corporations control activity such as REA+REGA and ICJCE.

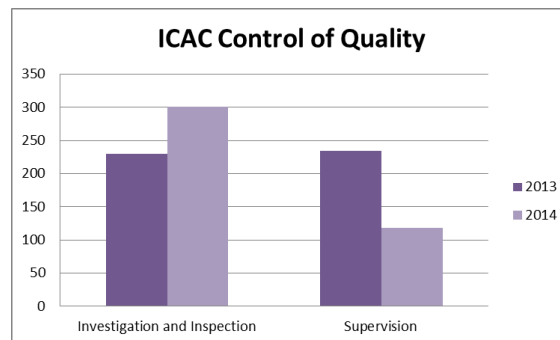


Figure 17: Direct and Indirect actions

Source: own elaboration from ICAC Activity Memories of 2013 and 2014.

In spite of the large control activity of the ICAC, only a handful of proceedings are sanctioned. However, the expedients sanctioned do not tend to rise, as the investigations and inspections. Only 60 expedients in 2013 and 52 in 2014 were sanctioned as shows Figure n.18.

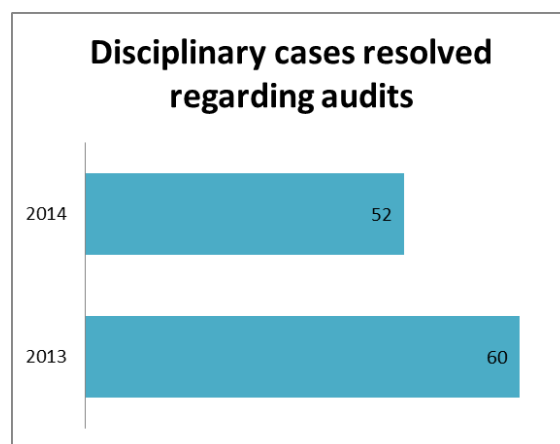


Figure 18: Sanctions proceedings

Source: own elaboration from ICAC Activity Memories of 2013 and 2014.

The proportion of sanctions is minimum respect the volume of the activity audit sector and the volume of the ICAC activity control. This could be due to a less degree of infringement by the auditors or the ICAC incapacity to control every audit contract.

Regarding the causes of infringements, there are several different aspects that preclude their comparison. In 2013 the first cause of infringements are the breach of the duty of rotation, followed by the breach of technical auditing standards, while the third cause is the lack of independence, concretely with gross negligence or wilful misconduct (Figure n.19). The lack of rotation is one of the several aspects that they affect to the auditor's independence; consequently, the lack of independence is now the first cause of infringements.

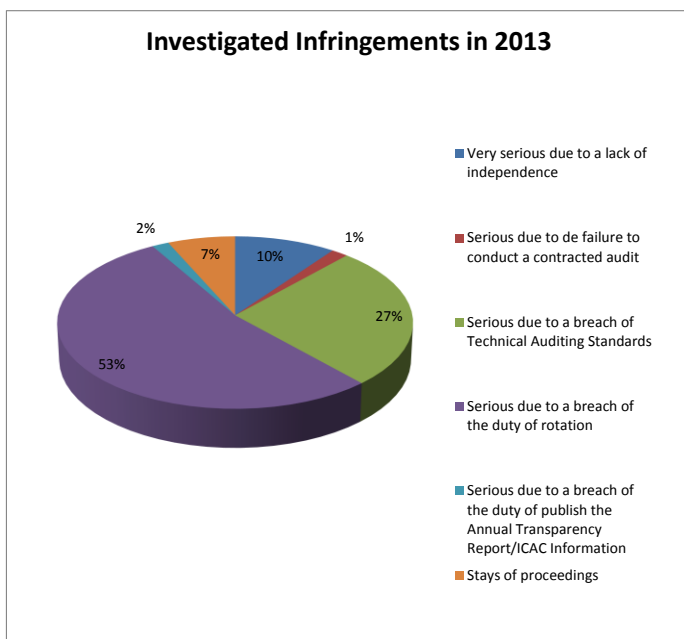
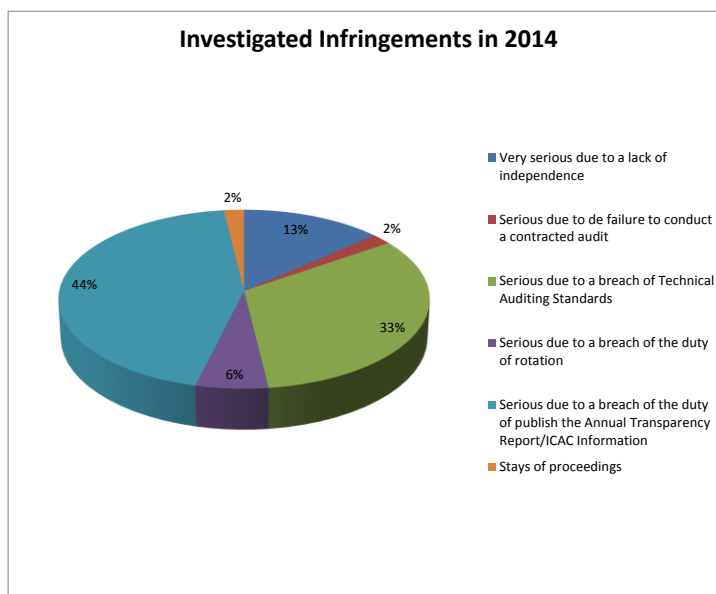


Figure 19: Cause of infringements in 2013

Source: own elaboration from ICAC Activity Memories of 2013 and 2014.

However, the first cause was the breach of the duty of publish the annual transparency report or the duty of provide information in 2014. The second and third causes are the same that the previous year, fact that shows the objective of the ICAC with its investigations (Figure 20).

Figure 20: Cause of infringements in 2014
Source: own elaboration from ICAC Activity Memories of 2013 and 2014.



It is important to point out the importance of the control of independences across the infringements and penalties system with the objective of improving the quality of the audit activity and the confidence on the financial information, especially in the case of important companies such as listed companies.

iv. A Case study according the three dimensions analysed: Pescanova data in non-audit services, rotation and fees.

In 1960 Jose Fernandez Lopez founds Pescanova, revolutionizing the history of the fishing world industry with its initiative to construct fishing vessels which it could process and freeze the fish on board. In the middle of the 60s there was born the brand Pescanova and it incorporates products of the sea and other varieties as precooked, vegetables, pizzas, and so on in 70s, being the reference brand in frozen products. In the decade of 80 Pescanova it is consolidated as a corporate group based on the vertical integration, controlling the whole process, from the origin, through the transformation up to the commercialization and it expands to Europe its commercial activity (Pescanova.es, 2016) It is not a new company such as Let's Gowex, Pescanova is a firm with a long background in its sector, trading on the Spanish Stock Exchange since June of 1998 and it is controlled by the CNMV since this moment (cnmv.es, 2016). Its financial states are public information and it is considered a Public Interest Entity (EIP).

Hereafter, it is exposed all the information according to the three dimensions named above in order to demonstrate if the Pescanova auditors were independents or not. Remember that the auditor independence could be considered through fees, rotation and non-audit services, among other questions but that are considered the most important for the analysis under study.

Firstly, BDO, the current audit firm of Pescanova in the period of the scandal, collect more than 2.37 million euros of fees from Pescanova Group between 2009 and 2014 (Efeagro.com, 2014), entering Pescanova into an insolvency procedure in March of 2013 (Elpais.com, 2013).

Secondly, the auditor of Pescanova group was the firm BDO during twelve consecutive years, fact that supposes the 63.3% of the total live of the company (cnmv.es, 2016). BDO is an international audit company that occupies the fifth place in the audit firms ranking with more than thirty years of experience in the audit market (bdo.es, 2016).

Finally, the Figure n.21 shows the degree of non-audit services between 2009 and 2015 for the audit firm from Pescanova. There are data only since 2003 but previous years the non-audit services were not made by BDO, the firm that audited the annual financial statements in this period. In addition, Ernest&Young was the Pescanova audit firm in 2014 and 2015, for this reason, the interesting period is since

2009 until 2013 in order to demonstrate the independence of BDO. The most important year in portion of non-audit fees was 2010 with 30.5%, but never BDO deliver services that suppose more than 50% of total non-audit fees (cnmv.es, 2016). The problem in that analysis is that there is not the perfect level of non-audit services and the law do not clarify this point.

YEAR	NON AUDIT FEES	% NON-AUDIT FEES
2015	571	7,10%
2014	377	100%
2013	50	6,00%
2012	125	1,04%
2011	60	7,49%
2010	276	30,50%
2009	191	20,00%

Figure 21: Degree of non-audit fees from Pescanova

Source: own elaboration

BDO was sanctioned for the breach of technical auditing standards and failure of information, not for lack of independence. This study reinforces the decision of the ICAC who do not sanctioned BDO for a lack of independence in attendance of the three aspects mentioned above (Abc.es, 2014).

Once analysed the infringements and penalties during the selected period in accordance with the theoretical framework, several questions may be answer.

It is essential pointing out the importance of the auditor's independence in the audit activity in order to reinforce the confidence and the quality of the auditor work. In addition, the only way to control and to ensure the auditor's independence is across the investigations of the responsible organism, the ICAC in this case.

Looking at the situation of the infringements and sanctions since 1992 in Spain, there is not a solid trending in sanctions a cause of the different laws and the change of the ICAC direction. Nonetheless, it has always been so much interest in the preservation of the auditor's independence because its importance in the audit activity. The lack of independence is one of the most important failures pursued for the legislation and, consequently, for the ICAC, however, it is very difficult to demonstrate this lack of independence for the reason that what is a threat to the independence for some, it is not always for others. In addition, the sanctions in the studied period are not a high level of amount and that fact could not be enough for avoiding infringements.

The activity of the audit sector is concentrated in a few audit firms, but it is necessary to deconcentrate the field in order to open the market, when the quantity of individual auditors is decreasing.

4. Conclusion

The audit in Spain is a public interest activity whose regulation has been recently amended by Audit Act-22/2015 with the objective to adapt the Spanish legislative framework to European standards and to stem the current situation of loss of confidence in the financial information, especially by improving those aspects that guarantee the auditor's independence. Once again, it is highlighted the importance of auditor's independence in the quality of audit activity and its close relationship with the improvement of the user's confidence in audited information. This paper makes an exhaustive analysis of the audit legislation, taking into account the current situation of the sector, which has proven its excessive concentration and the necessity of its openness, fact that the legislation collects as one of their motivations. In view of the introduced objective of this paper, analysing the leading role of the infringements and penalties system in auditor's independence, the current situation of the control and disciplinary activity implemented by the ICAC has been carefully considered, in order to demonstrate if this activity is effective in ensuring independence. The above mentioned studies allow concluding the following:

Firstly, one of the most relevant aspects on audit regulation is auditor's independence, a controversial issue in the literature but a key point because it has a critical role in the credibility of financial information. This controversy gets worse when the difficulty of proving the auditor's independence is also kept in mind. Because of that, audit regulation should consider all aspects that prove and fence the independence. This is a difficult task because there are many variables which affect the independence, but this report particularly noted out three crucial aspects for auditor independence: a) the cases of incompatibilities, including the limitation of non-audit services; b) the mandatory rotation, and c) the limitation of fees. It has been showed that, if the legislation regulates these aspects at an appropriate level, auditor independence will be guaranteed and, therefore, the trust of users on the financial information will increase significantly. However, the new act has been widely criticized by the industry and several public institutions. Such a thing might suggest that it is less restrictive in this regard than it should be; although if it is compared to the previous act, it has improved substantially, especially considering EIP regulation (Expansión.com, 2015).

Secondly, in relation to the infringements and penalties system, the legislation has not strengthened the type of offenses or increased the amount of fines in order to avoid the belief that the punishment system has the main goal of collecting money. The problem is that sanctions are ineffective to prevent independence violations in a very concentrated sector. Fines are now very low for a few companies with a high level of income but are very high for most of the audit sector with much lower levels of income. A vast majority of audits are executed by the named big 4 international audit firms whereas small independent auditors suffer the consequences of paying high fines even accepting the risk of disappear in some cases. It would be necessary in this regard a legislation which distinguishes different amount of sanctions depending on the degree of net income level and not only being decided by the level of fees.

Finally, after analysing the disciplinary and control ICAC activity in order to determine whether it prevents cases of infringements regarding auditor independence and it enables to improve it, it can be concluded that it is very difficult to guarantee the independence of auditors due to the difficulty to prove it. It is true that the lack of independence is one of the most sanctioned violations and, therefore, one of the most pursued by the ICAC. However, it is necessary to execute more and better control tools within a saturated market. The way to achieve this is by strengthening the infringements and penalties system and by giving the ICAC and other organizations the necessary tools to ensure a proper tracking and monitoring of audit activity. The disclosure of the transparency report has enabled to improve so much in this sense, but auditors are not exempt from fraudulent activities which should be prosecuted and punished by the ICAC, especially those concerning auditor independence, so they should adopt a more sceptical attitude. In order to anticipate any possible imbalance in the future, it should be a requirement to carry out continuous follow-ups and some constant inspections.

In short, it is essential to adapt the legislation to improve audit quality and credibility in financial information, especially in the independence of the auditor. One way could be to establish a proper control as well as an efficient system with well-defined infringements and appropriate sanctions. The current law has substantially improved those aspects which help to ensure auditor's independence, especially in the field of EIP, but there is still a long way to go. In addition, audit sector should help to achieve this objective by collaborating in the appropriate alignment of the legislation and by giving an example of independence, improving the prestige of the audit activity and the quality of financial information that is essential for the proper functioning of the market. The question now is if the new law is effective enough to avoid the lack of

independence in spite of the criticism for its hardness. According with this paper, it could be solved with the monitoring of infringements and sanctions when the law comes into force. If lawmakers dare to found the suitable fence to all the aspects that concern the auditor's independence and they implement the appropriate measures in order to control and punish their infringement, the auditor's independence will be guaranteed in the majority of cases and thus, the financial information will be trustworthy information. However, further studies are needed to clarify these points.

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6. Annex

19/1988 *Audit of Accounts*

- First audit legislation in Spain
- Includes Eighth Directive 84/253/CEE

13/1992 *Own Resources and supervision of the Financial Organizations*

- Modifies the infringements and penalties System

44/2002 *Measures of Financial System Reform*

- Adds Auditor's independence
- Adds Auditor's rotation
- Modifies Infringements and sanctions system

12/2010 *Audit Account Reform*

- Reforms first audit law 19/1988
- Adaptation to European Community Legislation

1/2011 *Audit of Accounts Law Restated Text*

- A comprehensive text of the law
- Includes all the modifications and incorporations

22/2015 *Audit of Accounts*

- Adapts the Spanish legislation: includes European Directive 2014/56/UE and Regulation (UE) 537/2014
- Improvements: transparency, independence, objectivity, opening the market, law harmonization, ...

Figure 22: Changes in audit legislation

Source: own elaboration

Figure 23: Infringements and Penalties System

Source: own elaboration

	Very serious infringement
19/1988	Very serious infractions do not exist in this law
44/2002	Gross negligence or wilful misconduct in: <ul style="list-style-type: none"> a. <i>Report Opinion</i> b. <i>The breath of Independence</i> c. <i>ICAC Control negative</i> d. <i>Breach of the secret duty</i> e. <i>Use of information for own profit</i>
12/2010	Gross negligence or wilful misconduct in: <ul style="list-style-type: none"> a. Report Opinion b. The breath of Independence c. ICAC Control negative d. Breach of the secret duty e. Use of information for own profit f. <i>Breach of auditing prohibition</i> g. <i>The breach of duty of custody and preservation</i>
22/2015	Gross negligence or wilful misconduct in: <ul style="list-style-type: none"> a. Report Opinion b. Independence, <i>maximum duration of the contract, limit of fees</i> c. ICAC Control negative d. Breach of the secret duty e. Use of information for own profit f. Breach of auditing prohibition g. The breach of duty of custody and preservation h. <i>Public Entity:</i> <ul style="list-style-type: none"> a. <i>No report emission under auditor duty</i> b. <i>No additional report emission for the Audit Commission</i> i. <i>Auditing without ROAC Registration</i> j. <i>Signature without permission in the name of an audit society</i>

	<i>Serious infringement</i>
19/1988	<ul style="list-style-type: none"> a. The breach of the obligation to realise an audit contracted firmly or accepted b. Report Opinion: content not in agreement with the obtained tests c. The breach of standards d. The breach of Independence e. Breach of the secret duty f. Use of information for own profit g. The lack of information remission to the ICAC: control work obstruction h. The acceptance of works that surpass the auditor capacity according to audit standards i. To be sanctioned of three minor offenses in the course of a year
44/2002	<ul style="list-style-type: none"> a. The breach of the obligation to realise an audit contracted firmly or accepted b. Report Opinion: breach of standards c. The breach of Independence d. The lack of information remission to the ICAC e. The acceptance of works that surpass the auditor capacity according to audit standards f. The emission of a report in a work different from audit g. The breach of report to national supervisors
12/2010	<ul style="list-style-type: none"> a. The breach of the obligation to realise an audit contracted firmly or accepted b. Report Opinion: breach of standards c. The breach of Independence without gross negligence or wilful misconduct d. The lack of information remission to the ICAC (delay less than 1 month) e. The acceptance of works that surpass the auditor capacity according to audit standards f. The breach of report to national supervisors g. The emission of a report in a work different from audit h. The breach to avoid the threats to independence i. No transparency report emission, incorrect/incomplete information j. ICAC Control negative by non-auditors subjects k. The lack of quality control l. The lack of communication of the breach of some requirement for the inscription in the ROAC m. The breach of continuous formation n. The breach of the obligation to allow the successive auditor the access to the documentation o. Auditing without ROAC Registration (*) p. Signature without permission in the name of an audit society(*)
22/2015	<ul style="list-style-type: none"> a. The breach of the obligation to realise an audit contracted firmly or accepted b. Report Opinion: breach of standards c. The breach of Independence without gross negligence or wilful misconduct d. The lack of information remission to the ICAC (delay less than 1 month) e. The acceptance of works that surpass the auditor capacity according to audit standards f. The breach of report to national supervisors g. The emission of a report in a work different from audit h. The breach to avoid the threats to independence i. Failure of performance of the inspection requirements j. No transparency report emission, no public entity identification, incorrect/incomplete information k. ICAC Control negative by non-auditors subjects l. The lack of quality control m. The lack of communication of the breach of some requirement for the inscription in the ROAC n. The breach of continuous formation o. The breach of the obligation to allow the successive auditor the access to the documentation p. No additional report emission for the Audit Commission, incorrect/incomplete content.

	Minor infringements
19/1988	a. Any actions and omissions that suppose breach of the audit norms and that are not including in previous articles.
44/2002	a. Any actions and omissions that suppose breach of the audit norms and that are not including in previous articles. b. The lack of remission of legal or regulatory information to the ICAC c. The breach of continuous formation (*)
12/2010	b. Any actions and omissions that suppose breach of the audit norms and that are not including in previous articles. c. The lack of remission of legal or regulatory information to the ICAC (delay less than 3 month)
22/2015	d. Any actions and omissions that suppose breach of the audit norms and that are not including in previous articles. e. The lack of remission of legal or regulatory information to the ICAC (delay less than 3 month)

SANCTIONS		
	By very serious infringements	
	AUDITORS	AUDIT FIRM
19/1988	There are not very serious infringements	
13/1992	There are not very serious infringements	
44/2002	a. Temporary suspension of ROAC by term between 5 and 2 years b. Definitive suspension of ROAC c. Penalty between 12,001 € and 24,000 €	a. Fine between 10.1% and 20% of fees of the last period (never less than 300,000 € or 6 times the amount invoiced). b. Fine between 10.1% and 20% of fees of the last period (never less than 18,001 €) in the case of penalties no related with an specific work. c. Definitive suspension in ROAC d. Audit partner: fine between 12,001 € and 24,000 €, temporary suspension (between 2 and 5 years) or definitive suspension
12/2010	a. Temporary suspension of ROAC by term between 5 and 2 years b. Definitive suspension of ROAC c. Penalty between 18,001 € and 36,000 €	a. Fine between 3% and 6% the fees of the last period (never less than 24,000 €). b. Definitive suspension in ROAC c. Audit partner: fine between 12,001 € and 24,000 €, temporary suspension (between 2 and 5 years) or definitive suspension
22/2015	a. Temporary suspension of ROAC by term between 5 and 2 years b. Definitive suspension of ROAC c. Fine of six to nine times the amount of the work of audit (between 18,001 € and 36,000 €)	a. Fine between 3% and 6% the fees of the last period (never less than 24,000 €). b. Definitive suspension in ROAC c. Audit partner: fine between 12,001 € and 24,000 €, temporary suspension (between 2 and 5 years) or definitive suspension

SANCTIONS		
	<i>By serious infringements</i>	
	<i>AUDITORS</i>	<i>AUDIT FIRM</i>
19/1988	a. Public reprimand b. Temporary suspension by term: - less than 1 year - Between 5 and 1 years c. Definitive suspension in ROAC	
13/1992	a. Fine up to 10% of fees of the last period (never less 3,001.60 €) b. Temporary suspension (maximum 5 years) c. Definitive suspension in ROAC	a. Fine up to 10% of fees of the last period (never less 3,001.06 €) b. Definitive suspension in ROAC c. Audit partner: fine between 12,020.25€ and 3,001.06 €, temporary suspension (maximum 5 years) or definitive suspension.
44/2002	a. Fine of two to five times the amount of the work of audit (between 6,001 € and 12,000 €) b. Temporary suspension in ROAC (maximum term: 2 years)	a. Fine up to 10% of fees of the last period (never less than 150,000 € or 3 times the amount invoiced). b. Fine up to 10% of fees of the last period (never less than 6,001 €) in the case of penalties no related with an specific work. c. Audit partner: fine between 3,001 € and 12,000€, temporary suspension (maximum 2 years) or definitive suspension.
12/2010	a. Fine of two to five times the amount of the work of audit (between 6,001 € and 12,000 €) b. Temporary suspension in ROAC (maximum 2 years)	a. Fine up to 3% of fees of the last period (never less than 12,000 €). b. Temporary or definitive suspension in ROAC c. Audit partner: fine between 3,000 € and 12,000€, temporary suspension (maximum 2 years)
22/2015	a. Fine of two to five times the amount of the work of audit (between 6,001 € and 18,000 €) b. Temporary suspension in ROAC (maximum 2 years)	a. Fine up to 3% of fees of the last period (never less than 12,000 €). b. Temporary or definitive suspension in ROAC c. Audit partner: fine between 3,000 € and 12,000€, temporary suspension (maximum 2 years)

SANCTIONS		
	<i>By minor infringements</i>	
	<i>AUDITORS</i>	<i>AUDIT FIRM</i>
19/1988	a. Personal reprimand	
13/1992	a. Fine up to 3,001.06 €	
44/2002	a. Personal reprimand b. Fine up to 6,000 €	b. Fine up to 6,000 € c. Audit partner: Personal reprimand
12/2010	a. Personal reprimand b. Fine up to 6,000 €	
22/2015	a. Personal reprimand b. Fine up to 6,000 €	